SJS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filting and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS		· · · · · · · · · · · · · · · · · · ·		DEFENDANG	re			
WILLIAM WILSON				DEFENDANTS				
WILLIAM WILSON				NCO FINANCIAL SYSTEMS, INC.				
(b) County of Residence of First Listed Plaintiff				County of Residence of First Listed Defendant				
(c) Attorney's (Firm N	- ame, Address, Telephone N	lumbor and Final Add	(mass)			ou Descridant		
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Craig Thor Kimmel, E					ND INVOLVED.			
Kimmel & Silverman,	P.C.			Altorneys (If Known)				
30 E. Butler Pike				Attorneys (II Known)	,			
Ambler, PA 19002								
(215) 540-8888 II. BASIS OF JURISI	VICTOR		<u> </u>		 			
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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be assignment to appropriate calendar.	e used by counsel to indicate the category of the case for the purpose of
Address of Plaintiff: 10408 Pheasant Run, Lovelo	ind. Ohio 48140
Address of Defendant: 507 Prudential Ruad Ho	15ham, PA 19044
Place of Accident, Incident or Transaction:	
(Use Reverse Side For A	dditional Space)
Does this civil action involve a nongovernmental corporate party with any parent corporation at (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))	
Does this case involve multidistrict litigation possibilities?	Yes O No Z
RELATED CASE, IF ANY: Case Number: Judge	Park The Street
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Civil cases are deemed related when yes is answered to any of the following questions:	
1. Is this case related to property included in an earlier numbered suit pending or within one year.	3-61
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior st action in this court?	
	Yes I No X
3. Does this case involve the validity or infringement of a patent already in suit or any earlier noteminated action in this court?	umbered case pending or within one year previously Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights	/ -
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CIVIL: (Place ✓ in ONE CATEGORY ONLY)	J
A. Federal Question Cases: 1. [I] Indemnity Contract, Marine Contract, and All Other Contracts	B. Diversity Jurisdiction Cases: 1. [I] Insurance Contract and Other Contracts
2. © FELA	2. Airplane Personal Injury
3. □ Jones Act-Personal Injury	3. Assault, Defamation
4. D Antitrust	4. ☐ Marine Personal Injury
5. D Patent	5. Motor Vehicle Personal Injury
6. Labor-Management Relations	6. © Other Personal Injury (Please
- Zabar Managomon Modernia	specify)
7. Civil Rights	7. Products Liability
8. Habeas Corpus	8. Products Liability — Asbestos
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11 All other Federal Question Cases 15 U.S.C § 1692	(Please specify)
(Please specify) ARBITRATION CERTI	FICATION
I. (Check Appropriate Cal	egory) :
Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and b \$150,000.09 exclusive of interest and costs;	elief, the damages recoverable in this civil action case exceed the sum of
Relief other than monetary damages is sought.	•
DATE: 10-2270 Cruig That Kimmel	57100
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I certify that, to my knowledge, the within case is not related to any case now pending or w	rithin one year previously terminated action in this court
except as noted above.	٠ - ١
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CIV 609 (6/09)	Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

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(b) Social Security - Cases and Human Services der	requesting review of a daying plaintiff Social Se	ecision of the Secretary of Health curity Benefits.	()
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(Civ. 660) 10/02

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM WILSON,	(
Plaintiff	}
v.	Case No.:
NCO FINANCIAL SYSTEMS, INC., Defendant	COMPLAINT AND DEMAND FOR JURY TRIAL
Defendant	(Unlawful Debt Collection Practices)

COMPLAINT

WILLIAM WILSON ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

- 3. Defendant conducts business and has an office in the State of Pennsylvania and therefore, personal jurisdiction is established.
 - 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).
- 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

- 6. Plaintiff is a natural person residing in Loveland, Ohio, 45140.
- 7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
- 8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.
- 9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.
- 10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, epresentatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 et seq. The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the

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FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

- 12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f. The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in connection with the collection of a debt.
- 13. In enacting the FDCPA, the United States Congress found that "[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," which "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress additionally found existing laws and procedures for redressing debt collection injuries to be inadequate to protect consumers. 15 U.S.C. § 1692b.

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debts by debt collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection practices by debt collectors, to insure that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

- 15. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.
- 16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.
- 17. Defendant, its agents, employees, and servants, engaged in debt collection activities seeking payment from Plaintiff.
- 18. Defendant, its employees and servants harassed the Plaintiff by making continuous calls to her hone telephone number.
- 19. Plaintiff received a substantial number of phone calls and voice messages from Defendant on a number of occasions, the latest being August 31, 2010.
- 20. This most recent phone call occurred after August 26, 2010, after Defendant was served with a letter of representation instructing Defendant to cease and desist all communication. The letter from the undersigned, was electronically delivered as requested by Defendant, to its authorized personnel. See Exhibit A, Plaintiff's Letter of Representation.

 21. Defendant placed repeated calls to Plaintiff's home telephone, often on a daily basis, causing Plaintiff to receive, at times, more than two (2) collection calls a day; more than ten (10) collection calls a week; and more then twenty (20) calls within one (1) month.

- 22. After initial contact by Defendant, Plaintiff has never received a letter notifying him of his rights and privileges under the law.
- 23. Defendant has failed to provide any documentation detailing the purchases, payments, interest, and late charges, if any, thereby making it impossible for Plaintiff to determine whether or not she owes the alleged debt and whether the alleged debt was correctly calculated.
- 24. Upon information and belief, Defendant sought to collect a debt from Plaintiff despite the fact that it had no documentation or knowledge of its validity.
- 25. Defendant's actions in attempting to collect the alleged debt were harassing, and deceptive.

CONSTRUCTION OF APPLICABLE LAW

- 26. The FDCPA is a strict liability statute. <u>Taylor v. Perrin, Landry, deLaunay & Durand</u>, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." <u>Russell v. Equifax A.R.S.</u>, 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); <u>Clomon v. Jackson</u>, 988 F. 2d 1314 (2d Cir. 1993).
- 27. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235

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(W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 et seq., is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

28. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

- 29. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:
 - a. Defendant violated of the FDCPA generally;
 - b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff

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in connection with the collection of an alleged debt;

- c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- d. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- e. Defendant violated § 1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt;
- f. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, WILLIAM WILSON, respectfully pray for a judgment as follows:

- All actual compensatory damages suffered pursuant to 15 a. U.S.C. § 1692k(a)(1);
- Statutory damages of \$1,000.00 for each violation of the b. FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- All reasonable attorneys' fees, witness fees, court costs and c. other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- Any other relief deemed appropriate by this Honorable Court. d.

DEMAND FOR JURY TRIAL

Pursuant to Civil Rule 38, Plaintiff hereby demands a trial by jury on all issues in this action, and any issues relating to the amount of attorneys' fees and litigation costs to be awarded should Plaintiff prevail on any of her claims in this action.

RESPECTFULLY SUBMITTED, KIMMEL & SILVERMAN, P.C

Date: 10-22-10

By:

Craig Thor Kimmel
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002

Phone: (215) 540-8888 Fax: (215) 540-8817

Email: kimmel@creditlaw.com

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CRAIG THOS KIMMEL**
ROBERT M. SILVERMAN**

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www.CREDITLAW.com

CORPORATE HEADQUARTERS 30 E. Buller Pike, Ambler, PA 19002 Toll Free (800)-668-3247 Fax (800) 863-1689

DELAWARE, 501 Silverside Road, Suite 118, Wilmington, DE 19809, (302) 791-9373

NEW ENGLAND, 60 Hartford Pike, P.O. Box 325, Dayville, CT 06241, (860) 866-4380

NEW JERSEY, Executive Quarters, 1930 E. Marlton Pike, Suite Q29, Cherry Hill, NJ 08003, (856) 429-8334

NEW YORK, 1001 Avenue of the Americas, 12th Floor, New York, NY 10018, (212) 719-7543

WESTERN DISTRICT OF NY, 1207 Delaware Avenue, Suite 440, Buffalo, NY 14209, (716) 332-6112

W. PENNSYLVANIA, 210 Grant Street, Suite 202, Pittsburgh, PA 15219, (412) 566-1001

Please reply to CORPORATE HEADQUARTERS

August 26, 2010

VIA E-MAIL

Ross S. Enders, Esq. Sessions, Fishman, Natham & Israel 200 Route 31 North, Suite 203 Flemington, NJ 08822

RE: Wilson, William v. NCO Financial Systems, Inc. 6408 Pheasant Run, Loveland, OH 45140 SS#, last four: 4082

Dear Mr. Enders:

Please be advised that we represent the above-named individual regarding claims against your company pursuant to the Federal Fair Debt Collection Practices Act, 15 U.S.C 1692, et seq. and State law. Having been formally notified of representation, we respectfully demand you not contact our client for any reason. Instead, please direct all future contact and correspondence to our attention only. We reserve the right to seek injunctive relief should you fail to honor these directives.

THIS LETTER ALSO SERVES AS NOTICE TO IMMEDIATELY CEASE AND DESIST CONTACTING OUR CLIENT with respect to the collection or attempted collection of any debt, pursuant to the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692b(6) and 1692c(b), et seq. There to be absolutely no calls, letters, or other communications whatsoever by any debt collector. Do not contact our client at home, at work, by cellular phone, by mail or otherwise.



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RICHARD A SCHOLER

CIDOSTINA GOLL ROSTMAN**/

Based upon the information received to date, an FDCPA claim is being prepared and will be filed against your company without further advance notice. You may if desired, contact us to discuss the matter but in any event, do not attempt to communicate with our client directly.

Sincerely,

/s/ Craig Thor Kimmel

Craig Thor Kimmel Kimmel & Silverman, P.C.